

The public sector and derivatives

I have highlighted before Network Rail's use of derivatives. In their last annual accounts to end March 2020 they report progress with winding down foreign currency futures, as they gradually eliminate the foreign currency borrowings previous managements had taken out.

They still had in place £12.5bn of hedges, mainly for interest rates. At year end the notional loss was a gross £895 million and a net £484m.. Why does a company that is entirely owned by the taxpayer and borrows with a state guarantee need to take out derivative contracts on interest rates? Why do we rarely see them making overall profits on these activities?

The BBC too has some of these derivative contracts. They also reveal unrealised losses on their foray into this complex market at their last balance sheet date. I haven't heard BBC journalists asking questions about any of this.

Saving lives and livelihoods – the policy dilemma

The government is accused of mixed messages and shifts of policy in response to the pandemic. It is in practice trying to achieve a precarious balance between bearing down on the virus and allowing the resumption of more normal economic life.

There are now two strong camps in the nation. There are the freedom lovers who think more of the special restrictions and measures should be lifted. They do not think the pandemic is that serious and want to see liberties restored. They point out the death rate as published is now very low and the pressure is off intensive care. There are pandemic fighters, who want every measure of control taken that can help bear down on the virus and go on to eliminate it. They resent any moves to more normal lives and worry that all relaxations come at a heavy medical price. They argue it is only a matter of time before the current upsurge in reported cases of the virus finds itself into the Care Homes and homes of the vulnerable and raises the death rate.

The government itself reflects these divisions in society. The Chancellor argues the case for more economic relaxation, whilst the Health Secretary puts forward the case for more restrictions based on official advice from the medical and scientific establishment. Policy tries to do a bit of both.

In order to inform public policy better and to influence the many people who feel both impulses, there need to be some further improvements in the data

and approach. We need to have better numbers collected over a sustained period for how many cases as a proportion of the population, how many serious cases needing intensive care, and how many death wholly or largely attributable to CV 19. Some of the back numbers are unreliable, and there have been various changes in definitions.

The officials of NHS England and Public Health England need to take the government's policy of increasing testing, and the substantial sums of money Ministers have made available, and show how the large demand for tests today can soon be met. The NHS needs to concentrate on getting its staff back to work in every surgery and ward to start to reduce the backlog of other treatments and to stop avoidable deaths from causes other than CV 19.

Some progress with treatments for CV 19

I reproduce below my recent question pressing for more results on use of drugs for CV 19

Question:

To ask the Secretary of State for Health and Social Care, what the most recent results are of trials of existing approved medicines as potential treatments for covid-19. (81471)

Tabled on: 28 August 2020

Answer:

Jo Churchill:

On 2 September, the World Health Organization (WHO) issued new interim guidance recommending the use of systemic corticosteroids in severe and critical COVID-19 disease. This is based on a meta-analysis of recent clinical trials including the United Kingdom supported REMAP-CAP and RECOVERY trials.

Clinical guidance has been issued recommending clinicians consider the use of systemic corticosteroids, including dexamethasone and hydrocortisone, for National Health Service patients with severe and critical COVID-19.

This updates previous NHS advice to consider dexamethasone for the management of hospitalised patients with COVID-19 who require oxygen or ventilation; the updated advice includes the use of intravenous hydrocortisone and aligns with the WHO guidance.

The NHS advice and WHO guidance can be found at the following links:

<https://www.cas.mhra.gov.uk/ViewandAcknowledgment/ViewAlert.aspx?AlertID=103092>

<https://www.who.int/publications/i/item/WHO-2019-nCoV-Corticosteroids-2020.1>

The answer was submitted on 15 Sep 2020 at 13:18.

[The government's legal statement](#)

Some constituents have asked about the legal base for the legislation Parliament will consider next week. This is it:

HMG LEGAL POSITION: UKIM BILL AND NORTHERN IRELAND PROTOCOL

This is the Government's legal position on the UK Internal Market Bill ("the Bill") which was introduced on 9 September. The purpose of the Bill is to promote the continued functioning of the internal market in the UK after the conclusion of the transition period provided for in the Withdrawal Agreement and the European Union (Withdrawal) Act 2018. The Bill also provides for how aspects of the Northern Ireland Protocol to the Withdrawal Agreement apply in the UK's domestic law. In particular it ensures that the government will be able to deliver its commitments to protect peace in Northern Ireland and the Belfast/Good Friday Agreement, and to strengthen and maintain the UK internal market.

Clauses 42 and 43 of the Bill give HMG the power to make regulations to (i) disapply or modify the application of any exit procedures that would otherwise be applicable to goods moving from Northern Ireland to Great Britain, and (ii) make regulations setting out how the provisions of the Northern Ireland Protocol on State aid are to be given effect for the purposes of domestic law. The clauses provide that these powers may be exercised in a way that is incompatible with provisions of the Withdrawal Agreement. Clause 45 of the Bill expressly provides that these clauses, and any regulations made under them, have effect notwithstanding any international or domestic law with which they may be incompatible or inconsistent. This 'notwithstanding provision' partially disapplies Article 4 of the Withdrawal Agreement because it removes the possibility of challenge before domestic courts to enforce the rights and remedies provided for in the Withdrawal Agreement. The effect is to disapply the EU law concept of 'direct effect'. This is the case regardless of whether any regulations made under clause 42 or 43 of the Bill are in fact incompatible with the Withdrawal Agreement.

It is an established principle of international law that a state is obliged to discharge its treaty obligations in good faith. This is, and will remain, the key principle in informing the UK's approach to international relations. However, in the difficult and highly exceptional circumstances in which we find ourselves, it is important to remember the fundamental principle of Parliamentary sovereignty.

Parliament is sovereign as a matter of domestic law and can pass legislation which is in breach of the UK's Treaty obligations. Parliament would not be acting unconstitutionally in enacting such legislation. This 'dualist' approach is shared by other, similar legal systems such as Canada, Australia and New Zealand. Under this approach, treaty obligations only become binding to the extent that they are enshrined in domestic legislation. Whether to enact or repeal legislation, and the content of that legislation, is for Parliament and Parliament alone. This principle was recently approved unanimously by the Supreme Court in *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

The legislation which implements the Withdrawal Agreement including the Northern Ireland Protocol is expressly subject to the principle of parliamentary sovereignty. Parliament's ability to pass provisions that would take precedence over the Withdrawal Agreement was expressly confirmed in section 38 of the European Union (Withdrawal Agreement) Act 2020, with specific reference to the EU law concept of 'direct effect'.

Sovereignty

We voted for Brexit to take back control. Brexit voters wish to live in a free self governing independent country. Remain politicians thought the vote should be about trade. They wrongly asserted we would definitely be better off in and thought that was all that mattered.

I have always thought sovereignty mattered more. I also think that we can follow policies that increase our prosperity once we restore our full powers of self government. I have set out at some length how we can be better off out. I can no more guarantee that than Remain politicians can guarantee greater income if we stay in. It will depend on how we use our freedoms and how the EU use theirs.

The Remain politicians have used a variety of ploys and devices to try to delay, dilute or prevent our exit. One of their first was the court case to prevent Ministers sending in our notice to quit without further Parliamentary processes, despite the clear referendum vote. The Miller case produced a useful defence of Parliamentary sovereignty in the verdict. I had always urged Mrs May to hold a Parliamentary vote on a one clause Bill to speed us up and was not surprised by the Court decision, even though it was clearly a delaying tactic.

The Judges said

"This is because Parliamentary sovereignty is a fundamental principle of the UK constitution, as was conclusively established in the statutes referred to in para 41 above. It was famously summarised by Professor Dicey as meaning that Parliament has "the right to make or unmake any law whatsoever; and

further, no person or body is recognised by the law as having a right to override or set aside the legislation of Parliament” – op cit, p 38. The legislative power of the Crown is today exercisable only through Parliament. This power is initiated by the laying of a Bill containing a proposed law before Parliament, and the Bill can only become a statute if it is passed (often with amendments) by Parliament (which normally but not always means both Houses of Parliament) and is then formally assented to by HM The Queen. Thus, Parliament, or more precisely the Crown in Parliament, lays down the law through statutes – or primary legislation as it is also known – and not in any other way “

This is now very helpful to the cause of Parliament legislating to sort out our border, customs and trade issues for the UK, notwithstanding the EU’s view of the Withdrawal Agreement. The Withdrawal Agreement is only the law because of the Act of Parliament that brings it into UK law. The UK Parliament is therefore free to amend it as it sees fit.

There are those who still seem to think it would be bad faith for the UK to exercise its sovereign powers in this way, and claim it is a breach of international law to do so. This Agreement between the UK and the EU is not some world law enforced by some world court. It is an international Agreement where the two sides disagree about its meaning and each claim bad faith about the other. Such disputes have to be sorted out between the two parties. This dispute could still be sorted by negotiation. Otherwise it will be sorted by the UK exercising its sovereignty over our single market and customs union, and the EU exercising its powers over its own. Doubtless neither side will like the other’s settlement. Each has to respect the powers of the other, as clearly stated in the Withdrawal Agreement itself.